IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 808 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI RUPESHBHAI BIPINCHANDRA CHUDGAR - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Applicant(s) : 1,
MR HL JANI ld. APP for Respondent(s) : 1,

Mr. Jitendra Malkan for Respondent No.2 Absent.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/11/2005

ORAL JUDGMENT

1. This is an application filed under the provisions of Section 397 read with Section 401 of the Code of Criminal Procedure, to challenge the order of learned Additional Sessions Judge, Court No.15, Ahmedabad, passed in Criminal Misc. Application No.2243 of 2003 dated 4th

November,2004. By the said order, the learned Additional Sessions Judge has allowed the said Criminal Misc. Application filed on behalf of the Directorate General of Central Excise Intelligence, Ahmedabad Zone Unit and cancelled the order of bail granted in favour of the present applicant by the learned Additional Chief Metropolitan Magistrate by his order dated 4th August,2003.

1.1 The applicant is charged for the offences made punishable under Section 9 of the Central Excise and Salt Act,1944 (hereinafter referred to as “the Act”) for evading the payment of central excise duty exceeding Rs.1 lakh. The applicant was arrested on 22nd July,2003. Thereafter, an application for bail was preferred on his behalf and after detailed consideration and hearing the learned Advocates for both the sides, the learned Magistrate granted bail in favour of the applicant on certain terms and conditions which are contained in the said order. The applicant was released on bail on sum of Rs.1 lakh and upon deposit of Rs.50,000/- before the learned Additional Chief Metropolitan Magistrate.

2. Being aggrieved of the said order, as stated above,

the present opponent No.2 preferred Criminal Misc. Application No.2243 of 2003 for cancellation of bail. The learned Additional Sessions Judge, Court No.15, Ahmedabad was of the opinion that this being a serious offence and in particular, a serious economic offence, the applicant did not deserve bail. Hence, the learned Additional Sessions Judge, allowed the application and quashed the order of the learned Additional Chief Metropolitan Magistrate.

3. I have perused the record of the Revision Application and also heard Mr.Y.S.Lakhani, learned Advocate for the applicant. Mr.J.M.Malkan, learned Assistant Solicitor General for the opponent No.2 is absent. I have also perused the relevant provisions viz. Section 9 of the Act. Clause (b) of Sub-section (1) of Section 9 states that whoever evades the payment of any duty payable under this Act, amounts to committing offences and Sub-Clause (i) of Clause (d) of Sub-section (1) of Section 9 states that in the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine.

4. It is, therefore, clear that irrespective of the evasion of the amount of duty above Rs.1 lakh, the maximum punishment that is prescribed is seven years sentence and fine. In the instant case, the order of the learned Magistrate shows that the amount of duty payable by the applicant is yet not determined, because no notice of demand under Section 11-A of the Act has been served on the applicant nor any adjudication proceedings for recovery of the duty has been initiated. The learned Magistrate has also observed that even after filing of the complaint, the applicant was out for more than 2 and ½ months and he was, thereafter, arrested, but before his arrest, there was no tampering either with the documentary evidence or the witnesses and all throughout he has co-operated with the investigation. The only factor that is weighed with the learned additional Sessions Judge is that this is a serious economic offence. However, the learned Additional Sessions Judge has ignored the principles enunciated by the Apex Court as well as this Court in the matter of cancellation of bail and where the learned Magistrate has set out proper and good reasons for releasing the applicant on bail, the learned Additional Sessions Judge ought to have been

slow in interfering with the said decision. When the learned Magistrate had exercised discretion properly and had found that there was no likelihood of tampering with the witnesses and the applicant was not likely to abscond, there was no justification for the learned Additional Sessions Judge to cancel the bail. I am, therefore, of the opinion that considering the facts of the case and also the reasons specified by the learned Magistrate, the order of the learned Additional Sessions Judge, Court No.15, Ahmedabad is required to be quashed and set aside. This is more so in view of the fact that even after the cancellation of the order of bail passed by the learned Magistrate dated 4th August,2003, he has remained on bail by virtue of the protection granted to him by this Court. It is, therefore, not desirable to now send him again to custody. In view of the aforesaid, this Revision Application is allowed and the judgment and order of the learned Additional Sessions Judge, Court No.15, Ahmedabad, dated 4th November,2004, passed in Criminal Misc. Application No.2243 of 2003, is hereby quashed and set aside. Rule is made absolute. The applicant is now not required to surrender to custody.

(Akshay H. Mehta,J.)

(vipul)